FILED

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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

JESSIE EDWARD WILLIAMS

Petitioner

v.

CAPPS TRAILER SALES

ET. Al.

Respondents

PETITION FOR WRIT FOR CERTIORARI FROM

SUPREME COURT OF ALABAMA

PETITION FOR WRIT OF CERTIORARI

JULIA ASAM

ATTORNEY AT LAW

P.O. BOX 591

NORTHPORT, ALABAMA 35476

QUESTIONS PRESENTED

I. Whether a state procedural law [Code of Alabama, § 6-2-3, 1975, concerning the tolling of the statute of limitations when newly discovered fraud) interpretation and misinterpretation by the highest court in the state ignoring the true facts in instant case that two affidavits were presented in the lower court that concrete blocks had to be removed off Mr. Williams before he could be lifted from the wrecked truck cab and the concrete blocks were the proximate cause of the accident due to Mr. Huey Capps and Mr. Alston Keith [silent partner in Capps Trailer Sales] demanding Mr. Williams to overload his truck with concrete blocks when Mr. williams was having to haul a trailer and when the milk tanker hit Mr. Williams on the highway and Mr. Williams was also driving a defective vehicle which Mr. Capps had not fixed and had no permit with no brake away switch [none of the above was known in 1973 or mentioned in any record before filing the

instant case], there was truly discovered new evidence showing fraud as described in the lower circuit court and cause the constitutional violation of Mr. Williams due process in the courts because the courts failed to have a jury trial to determine the true facts but instead ruled for the special interest groups of lawyers representing the insurance companies who failed to give Mr. Williams what he was due as a paraplegic ; the point is the courts claimed re-evaluation instead of reading the entire record when in reality there was newly discovered fraud evidence as presented in state courts which clearly would have triggered the tolling fraud statute for newly discovered fraud [Code of Alabama, §6-2-3] which the courts have ignored in state courts causing Mr. Williams to have no due process in any court, ie. the question is

whether Mr. Williams' constitutional right to have due process under the 5th and 14th amendments to the U.S. Constitution have been violated by procedural laws of state.

II. Whether the instant case is a frivolous lawsuit when the newly discovered fraud had cause Mr. Williams to be a paraplegic when the attorneys against Mr. Williams represent special insurance groups that had no interest in paying what Mr. Williams was due, attacked the attorney for Mr. Williams because Mr. Alston Keith and Barton Spence for alleged attorney fees were over $11,000 each two hearings and no jury trial and the said attorney fees requested were contested by Julia Asam after the ruling as excessive because Mr. Keith failed to send a copy of his alleged attorney fees which were ruled by the judge to be paid by attorney Asam, but attorney Asam

is writing this Writ of Certiorari because of the EXCESSIVE amount of the attorney fees for two hearings in the lower court; the real issue is whether Julia Asam's due process rights were violated under the 5th and 14th amendments to the U.S. Constitution because there was no hearing for the alleged amount of attorney fees and no notice of the attorney fees before the ruling and Keith and Spence failed to send a copy of his alleged attorney fees to Asam before ruling?

III. Whether Keith and B.Spence again violated Asam's due process rights under the 5th and 14th Amendments to the U.S. Constitution and violated and abused the Alabama Litigation Accountability Act by charging excessive attorney fees and pretending to send interog-gatories to execute ohe judgment for excessive fees and having the Judge Ryan to write an order to compel phantom papers or be in con-tempt was appealed since a constructive final order? [There are two appeals one about Keith

and the other about Spence; this appeal is about Spence who sent the interrogatories to the wrong address so that Asam would not receive the interrogatories]-- this Honorable Court should take original jurisdiction because of abuse of Rule 11, Alabama Rules of Court is infringing on constitutional rights of Asam.?

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PARTIES TO THE PROCEEDINGS

The petitioner is Jessie Edward Williams who was Plaintiff and Appellant below.

The Respondents are Mr. Huey Capps, Capps, Trailer Sales, who were Defendants and Appellees below.

ORAL ARGUMENT REQUESTED

The Petitioner respectively requests that oral argument be allowed because of the complexity of the facts and the law in the instant case, and so that the Honorable Justices can ask questions.

No.

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OPINIONS BELOW

The Petitioner incorporates all statements which are stated in the Appendix as Opinions Below onto this Writ of Certiorari.

JURISDICTION

Reversal and review is sought from the final decision of the Supreme Court of Alabama, Jurisdiction is invoked under 28 U.S.C. 1257 as Writ.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment XIV of Constitution of the United States provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law..."

Amendment XIV of the Constitution of the United States further provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws."

Also, jurisdiction of this Court is invoked under U.S. Constitution, Amendment V, "no person shall... be deprived of life, liberty or property, without due process of law;"

STATEMENT OF THE CASE

This instant case is about the violation due process rights of the Petitioner to have his day in court when the courts below have failed to consider the true facts in the instant case that newly discovered fraud was clearly shown when two affidavits below clearly stated that they had to remove concrete blocks out of the truck cab in a severe accident in order to lift Mr. Williams out of the truck cab who had been made a paraplegic due to his boss from Capps Trailer Sales, Mr. Capps

demanding that Mr. Williams drive with an overload of concrete blocks while hauling a trailer, with no break away switch or permit and when Mr. Williams trailer that he was hauling was hit by a milk tanker Mr. Williams vehicle and trailer left the road and Mr. Williams became a paraplegic as stated in the facts below.

challenged the Alabama law in Code of Alabama, §6-2-3, the fraud tolling statute, since in the instant case all courts below ignored the true facts concerning newly discovered fraud, and not re-evaluation that the courts wished to claim to rule in favor of the special interest insurance companies.

This case is now concerning abuse of the Alabama Accountability Litigation Act and conspiracy to defraud Dr. Asam of her right to practice law by Keith and Spence pretending to send interrogatories to execute on an excessive judgment of over $11,000 each for two hearings and no trial which was primarily started by

a group of lawyers who wished to put Asam out of business because she was the first woman to run as circuit judge candidate in Tuscaloosa County in 1992, and again in 1994 but loss the election; however she obtained over 15,000 votes and this was a real threat to the all male judgship in Tuscaloosa County.

STATEMENT OF THE FACTS

The Petitioner stated that the Alabama Supreme Court did erroneously reject the fraud tolling statute, Alabama code § 6-2-3 and violated the due process rights of Mr. Williams under 5th and 14th amendments to the U.S. constitution.

The failure to provide proper safety equipment on implied contract is gross fraud by misleading the driver, Mr. Williams, that he had safe equipment to haul a trailer, and that Mr. Williams had relied on the company of Capps Trailer Sales to provide

him with safe equipment to complete the job of hauling trailer for Mr. Huey Capps, and because of this unsafe trailer with no safety switch the driver in an emergency was unable to control the trailer on the road after being hit by a milk tanker, and after also having an overload of concrete blocks which was also a fraud because NO permit to haul an overload of concrete blocks and Mr. Capps knew or should have know that he was misleading the driver. The bottom line is that disputed facts should have been decided by a jury, and the wrong standard of review dismissing the case when there were "sets of facts" to show a claim is reversible error. See Argument.

The point is case below should have not been dismissed when there is a disputed fact whether there was fraud in Mr. Capps requiring Mr. Williams to haul an unsafe load of concrete blocks on a trailer home without a permit when the said concrete blocks were the proximate cause of Mr. Williams being a paraplegic and never walking again.

REASONS FOR WRIT OF CERTIORARI

QUESTIONS I, II, AND III are discussed together since bottom line is lack of due process in the trial court and the appellate court.

THE PLAINTIFF'S RIGHTS TO DUE PROCESS IN TRIAL COURT UNDER THE 5TH AND 14TH AMENDMENTS TO THE U.S. CONSTITUTION WERE VIOLATED BY THE LOWER TRIAL COURT WHO RULED INCORRECTLY AND MADE REVERSIBLE ERROR ON ALL DISPOSITIVE MOTIONS AND ALWAYS RULED FOR THE DEFENDANT, AND IN THE APPELLATE COURT, THE SUPREME COURT OF ALABAMA, WERE VIOLATED WHEN THE APPELLATE COURT RULED "AFFIRMED", INFRINGING ON THE CONSTITUTIONAL RIGHTS OF A CITIZEN OF THE UNITED STATES TO DUE PROCESS IN THE APPELLATE COURT BECAUSE OF SPECIAL INTERESTS.

The threshold issue is clearly concerned whether the Plaintiff had due process rights under the 5th and 14th Amendments to the U.S. Constitution to have his case properly heard in the trial court below and appellant court. All of issues listed are being discussed together since all relate to whether Plaintiff received the proper due process in any court.

See Jones v. Alabama State Docks, 443 So. 2d 902 at 903, (Ala. 1983), which states, "Due process clause of State Constitution secures every citizen against arbitrary action of those in authority and places him or her within protection of law of the land. Const. § 13."

See Velger v. Cawley, 525 F. 2d 334 (2nd Cir. 1975) on due process.

See Standard Oil Co. v. Graves, Wash. 1919,. 49 S. Ct. 320, 249 U.S. 389, 63 L. Ed. 662, which states,

"While the Supreme Court follows the decision of the highest state court as to the meaning of a state statute which asserted to violated the Federal constitution, the name given to the statute is not conclusive, and it must be judged by its necessary effect, and if that is to violate the Constitution of the United States the law must be declared void. Emphasis added.

See Horwitt v. Horwitt, D.C., Conn. 1950, 90 F. Supp. 529,

"United States Supreme Court may review directly the decision of the highest state courts on the constitutionality, under the Federal Constitution, of state statutes."

Because of the constitutional violations as stated above when no due process was shown to Mr. Williams, his civil rights under 42 U.S.C. § 1983 were violated when he is a paraplegic.

The Petitioner is asking this Honorable Court to take original jurisdiction of this instant case and review the incorrect decisions of the State of Alabama, Supreme Court of Alabama, ignoring their own law, Code of Alabama, § 6-2-3 on the tolling of the statutes of limitations for newly discovered fraud which was ignored in the lower court even when there were 2 affidavits showing that concrete blocks had to be removed from the wrecked cab before Mr. Williams who was made a paraplegic because of the fraud of the concrete blocks overloading his hauling of a trailer when he was hit by a milk tanker when there was no brake away switch and no permit to haul the

extra load. The Supreme Court of Alabama stated there was "re-evaluation" when in reality there was newly discovered fraud evidence which was not available in 1973. When a court fails to follow its own law, there should be an exception to any legal technicality to avoid review by an appellate court. Clearly, Mr. Williams due process rights under 5th and 14th Amendments to the U.S. Constitution have been violated in all courts below and this Writ should be granted and the case decided on its merits.

The Petitioner incoroporates all statements made in Questions I,II and III into this discussion on Reasons for Writ of Certiorari.

The facts and law presented in this Writ for Certiorari clearly show that the instant case is not a frivolous lawsuit for which the attorney should be sanctioned.

Material factual issues concerning existence of fraud should be decided by a jury. See Great Destinations, Inc. v. Transportes Aereos Portugueses S.A.R.L. 460 F. Supp. 1160 (1978), which states,

"In action in which plaintiff alleged that it was fraudulently induced by defendant to undertake damages, summary judgment was precluded by existence of material factual issues concerning existence of fraud." (Emphasis added.)

The Writ of Certiorari should be granted and Merits brief allowed, and then the instant case should be reversed and remanded for a trial by a jury of all triable issues.

Because there is no frivolous lawsuit, no attorney, including Keith and Spence should receive any attorney fees especially since the attorney Asam was not given due process under the 5th and 14th Amendments to the U.S. Constitution before a ruling that she was to pay in excess of $11,000

to two attorneys when there were only two hearings in the trial court. Clearly, the Alabama Litigation Accountability Act has been abused and constitutional violations have taken place against the Plaintiff and the attorney Asam. No attorney fees should be allowed any attorney in the instant case since not a frivolous lawsuit when the Plaintiff was made a paraplegic. The point is Julia Asam was not served with the amount of the attorney fees, and no notice or hearing was made on the attorney fees, and as soon as she knew about the alleged attorney fees she has been objecting ever since.

CONCLUSION

Writ of Certiorari

should be granted for reasons stated in this Writ above, and the Merits brief allowed to be written and the case reversed and remanded for a trial by a jury.

3/30/95
Dated

Respectively submitted,

Julia Asam

Julia Asam, Attorney At Law

P.O. Box 591

Northport, Alabama 35476

APPENDIX

a-1

IN THE CIRCUIT COURT OF DALLAS COUNTY, ALABAMA

JESSIE E. WILLIAMS,

Plaintiff

v. CV 90-80-T

CAPPS, TRAILER SALES, INC. ET AL.

Defendants

Filed August 17, 1994

POST-JUDGMENT ORDER

Upon reviewing the judgment creditor Guarantee Insurance Compnay's Motion to Compel the judgment debtor Julia McCain Lampkin Asam to answer post-judgment interrogatories and requests for production, the Court is of the opinion that (1) Ala. R. Civ. P. 69(g) provides for the service of these post-judgment discovery requests "in the manner provded in these rules"; (2) the Rules of Civil Procedure elsewhere provide that interrogatories and requests for production shall be answeered/responded to within 30 days (with three additional days if the discovery requests are served by mail); [Spence sent to wrong address] (3) that more than thirty-three days has elapsed

since Guarantee's service on Asam of its discovery requests; and (4) that Guarantee's discovery requests are reasonably calculated to lead to the discovery of assets of Ms. Asam on which Guarantee may execute the judgment it holds against her.

WHEREFORE, this Court orders that Ms. Asam shall answer and respond to Guarantee's discovery requests within 15 (fifteen) days of the date of enetry of this order or be held in contempt of court.

So ordered this 10th day of August 1994.

/s William Ryan,
Honorable William Ryan, Judge

Appealed August 25, 1994.

Alabama Court of Civil Appeals

Jessie E. Williams

Plaintiff

v. AV 930000838

Capps Trailer Sales Inc. et al.

Defendants

Appeal Dismissed. No opinion.

Clerk Sept. 9, 1994

Alabama Court of Civil Appeals

Jessie E. Williams

Plaintiff

v. AV 930000838

Capps Trailer Sales Inc. et al.

Defendants

Application for rehearing overruled.

No opinion written on rehearing.

Clerk October 12, 1994

Supreme Court of Alabama

Jessie E. Williams

Plaintiff

v. 1931673

Capps Trailer Sales Inc. et al.

Defendants

Writ of Certiorari denied.

Clerk January 3, 1995

Alabama Court of Civil Appeals

AV 93000015

"Julia McCain Lampkin Asam

v.

Capps Trailer Sales, Inc. et al.

and Guarantee Insurance Company

Appeal from Dallas Circuit Court

(CV 90-80)

HOLMES, Retired Appellate Judge

The trial court assessed attorney fees and costs pursuant to the Alabama Litigation Accountability Act, Ala. Code 1975, §§ 12-19-270 through -276, in favor of Capps Trailer Sales, Inc., and Huey H. Capps, Individually, and as owner (collectively referred to as Capps), and Gurantee Insurance Company (Gurantee).

The attorney against whom the fees and costs were assessed appeals. This court has jurisdiction of this case pursuant to Ala. Code 1975, § 12-2- 7(6). We affirm.

This case has experienced a long journey. This court previously determined that the attorney violated the Litigation Accountability Act and was liable to capps and Guarantee for their attorney fees. For a complete understanding of the background of this appeal, see Williams v. Capps Trailer Sales, Inc., 607 So. 2d 1272 (Ala. Civ. App. 1992).

This court remanded Williams to the trial court, with instructions "to reconsider the amount of attorney fees awarded to Capps and Gurantee and to issue a statement of the reasons for the amount in compliance with § 12-19-273." 607 So. 2d at 1276.

After remand, Guarantee submitted evidence that its fees and costs totalled $11,097.17. Capps submitted evidence that its fees and costs totalled $11,520.97. The recorded indicates that Capps and Guarantee mailed to the attorney copies of the evidence submitted to the court. No evidence was presented by the attorney.

The trial court issued an order in compliance withthis court's prior mandate, granting the amounts claimed by Capps and Guarantee. The attorney appeals from that order.

The attorney attempts to present certain issues to this court; however, the dispositive issue is whether the trial court acted properly in entering the award in favor of Capps and Guarantee.

The attorney did not dispute the amounts claimed by Capps and Guarantee. It is clear that the trial court had no choice but to act on the undisputed evidence before it. As previously noted, the trial court had already been ordered by this court to reconsider the awards to capps and Guarantee in light of the affidavits setting out the amount of litigation expneses incurred.

In issuing that mandate, this court admonished:

"[W]e read § 12-19-273 and the pertinent case law to require that the trial court also state reasons for the amount awarded. This seems especially appropriate where, as in the case sub judice, the amount of attorney fees was unconstested and there was such a significant difference between the undisputed averments in the accompanying affidavits and fees actually awarded." 607 So. 2d at 1276 (citation omitted).

Pertinent case law is Freeman Wrecking Co. v. City of Prichard, 530 So. 2d 235 (Ala. (1988). That case concerned an award of attorney fees made prusuant to an indemnity agreement. In assessing the amount of fees to be awarded, the trial court had before it only an itemized billing statement showing over $18,000 in fees. Even so, the trial court granted only $8,450 to the prevailing party.

The supreme court, based on its observation that "[t]he reasonableness and accuracy of the charges reflected in the statement are undisputed," held:

"There was no other evidence before the trial court as to the value of the legal services rendeered. Thus, it is clear that the award of the trial court is not supported by the evidence. We find that counsel for Freeman Wrecking is entitled to the sum of $18,675."

Freeman, 530 So. 2d at 238.

In the instant case there was no evidence before the trial court as to the amount of attorney fees and costs incurred by Capps and Guarantee behond that submitted by Capps and Guarantee. This undisputed evidence showed $11,520.97 in reasonably incurred litigation expenses was due Capps and $11,097.17 in reasonably incurred litigation expenses was due Guarantee.

We note, as did the trial court in its order, that the attorney did not, in eight months, ever deign to dispute the amount of submitted lititation expenses. She should not be heard to do so now.

In view of the above, this case is due to be affirmed.

The foregoing opinion was prepared by Retired Appellate Judge Richard L. Holmes while serving on active duty status as judge of this court under provisions of § 12-18-10(e), Code 1975, and this opinion is hereby adopted as that of the court.

AFFIRMED. October 22, 1993

All the judges concur.

Alabama Court of Civil Appeals

Ex Parte Julia M. L. Asam

November 24, 1993 No. AV 93-000015.00

"Application for rehearing overruled. No opinion written on rehearing."

Clerk

Supreme Court of Alabama

1930293 January 28, 1994

Ex parte Julia M. L. Asam.

Certificate of Judgement Writ Denied.

Hornsby, CJ. Almond, Houston, Kennedy, and Cook, JJ., concur.

Supreme Court of Alabama

1930293 February 14, 1994

Ex parte Julia M. L. Asam.

"IT IS ORDERED that the application for rehearing filed in this cause on February 11, 1994, be, and the same is hereby stricken in accordance with the provisions of Rule 39(j), Alabama Rules of Appellante Procedure. NO COSTS TAXED.

Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND ACCURATE COPY of the Writ of Certiorari was sent to James Simpson, Berton Spence, Lange, Simpson et al., 1700 First Alabama Bank Bldg., Birmingham, Alabama 35203 this 30 day of March 1995.

Julia Asam